IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
PYLE, THOMAS G.,	)	**Supreme Court #85650**
	)	
Respondent.	)	

INFORMANT'S BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

REGULATIONS

STATEMENT OF JURISDICTION

This action is one in which the Chief Disciplinary Counsel is seeking to discipline an attorney licensed by the Missouri Bar for violations of the Missouri Rules of Professional Conduct. Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040, RSMo 2000.

STATEMENT OF FACTS

Respondent, Thomas G. Pyle, was licensed to practice law in Missouri on April 28, 1984. **T.** 6-7, **Ex.** A, ¶ 2.[1] Respondent has received prior discipline. **Ex.** A, ¶ 6. On May 16, 1996, Respondent was issued and accepted an admonition for violating Rule 3.3(a)(1) (knowingly making a false statement of material fact to a tribunal). **Ex.** A, ¶ 6. The violation was based upon the fact that in two pending state civil cases Respondent stated to the Court that his client had filed for relief under the bankruptcy code, when the client had not done so. **Ex.** A, ¶ 6. Respondent practices in Stockton, Missouri. **Ex.** A, ¶ 4.

On or about May 23, 2001, Ms. Lisa Gannaway employed Respondent to represent her in connection with a wrongful death action. **Ex.** A, ¶ 18. Ms. Gannaway's seventeen-year-old son, Brandon Standridge, had been killed on April 17, 2001, when a City of El Dorado, Missouri police officer, driving at excessive speed and without a siren, failed to yield and struck the car Brandon Standridge was driving. **Ex.** A, ¶ 7.

Ms. Gannaway signed a fee agreement with Respondent which provided, in pertinent part:

> "We, Lisa Gannaway and John Keeton, the mother and step-father of Brandon Standridge, retain Thomas Pyle, Attorney at Law, as counsel to take all steps, proceedings and actions, which counsel finds necessary to

[1] Respondent and Informant agreed to a Stipulation of Facts which was admitted into evidence as Exhibit A. **T.** 6-7.

obtain settlement, verdicts, compromises and judgment by reason of automobile accident which their son was killed on or about April 17.

1. We, give our attorney full authority to act on our behalf in all matters concerning our claims for medical expenses, present and future personal injuries, lost wages, lost employee benefits and any other losses resulting from the incident on april [sic] 16 [sic], 2001. We give our attorney full authority to gather medical and other evidence, enter into agreements, appear on our behalf in Court and administrative hearings, and do any other act which in his decision he deems appropriate.

Ex. A, ¶ 8, **Ex.** 3[2].

After the death of her son, Ms. Gannaway became increasingly depressed and confused. **Ex.** A, ¶ 9; **Ex.** 6, p. 5. Following the filing of the lawsuit, the City of El Dorado's defense attorneys wanted to depose Ms. Gannaway. On October 25, 2001, defense counsel took Ms. Gannaway's deposition. **Ex.** A, ¶ 10.

After Ms. Gannaway's deposition transcript arrived, Respondent asked Ms. Gannaway to come to his office and sign the transcript. **Ex.** A, ¶ 11. Ms. Gannaway refused to do so. **Ex.** A, ¶ 11. Instead, Ms. Gannaway sent Respondent a letter which provided:

[2] The Stipulation of Facts has fifteen exhibits attached to it. These exhibits are numbered and citations in this Brief to numerically designated exhibits are referencing exhibits to the Stipulation of Facts.

"Don't tell Johnnie, (he's temperamental. . . . did ya hear?), I wrote You a book while you were away at George Bush's Summer camp for punks. I left a note in the window of my 14x70 that said if anybody sees/talks to Tom Pyle tell him I died. Did ya hear? Hear say. Hear say anyway about . . . the rest of the story …? OK, I'll title that one Hi I went to college once what social class do you "belong" in . . . me? I'm a libra and I'll just make it anyway and who the hell would've thought Tom was too.

Lisa Gannaway

P.S. Did they teach you how to read & write in school Tom? Sign my name to that faulty equipment deposition then I'll cover for ya if the FEDS Break you door down. LG."

Ex. A, ¶ 11; **Ex.** 4.

On or about November 14, 2001, Respondent signed Ms. Gannaway's name to Ms. Gannaway's deposition transcript. **Ex.** A, ¶ 12. Ms. Gannaway was not present when Respondent signed her name to the deposition. **Ex.** A, ¶ 12. Respondent did not note that he was signing the transcript on Ms. Gannaway's behalf. **Ex.** A, ¶ 13.

Respondent instructed his secretary, Ms. Bernice Anderson, to notarize the signature page of the deposition transcript. **Ex.** A, ¶ 14; **Ex.** 5, p. 34. While Respondent did not specifically instruct Ms. Anderson as to the manner in which the signature page should be notarized, the preprinted signature page provided:

"_____

Lisa Gannaway

Subscribed and sworn to before me this ___ day of _____ November, 20___

_____

Notary Public"

Ex. A, ¶ 12; **Ex.** 5, p. 34.

Ms. Anderson notarized the deposition signature page so as to reflect that Ms. Gannaway had appeared before Ms. Anderson and signed the transcript when in fact Respondent had signed Ms. Gannaway's name to the transcript page. **Ex.** A, ¶ 12; **Ex.** 5.

Approximately six weeks after her deposition was taken, Ms. Gannaway was involuntarily committed to a psychiatric hospital and Respondent was appointed to serve as her attorney. **Ex.** A, ¶ 15. The individual affiant supporting the application for involuntary commitment testified:

> "I have known Lisa for approximately 5 years. During this time she has been rational & very functional. However the loss of her son Brandon in an auto accident on (041701) has place [sic] her under overwhelming strain. She has attempted to work through her grief with marginal success. She has become depressed and impaired in her thought and behavior. On December 1, of 01 she was presented to Citizens Memorial Hospital in Bolivar in an apparent Catatonic state. On Dec 2001 she left a note on my door indicating suicidal intention. She has tested (negative) for drugs at CMH on 120101. However she remains confused, depressed and potentially suicidal."

Ex. A, ¶ 15, **Ex.** 6, p. 4.

Ms. Gannaway occasionally wrote the Defendants' attorneys directly notwithstanding Respondent's request that she not do so. **Ex.** A, ¶ 16. In her May 30, 2002, letter to James Conkright, one of the defense attorneys, she stated, among other things:

> "Did you hear that I was involuntarily committed for 96 hours to the psych Hospital in December? Tom has the chart. He has my permission to give it to you and we can talk about it after I've read it. I am competent to make my own decisions I'll provide professional references – Let me know."

Ex. A, p. 16; **Ex.** 7, p. 2. With the May 30, 2002, letter to James Conkright, Ms. Gannaway also enclosed a letter to Respondent and a letter to one of the other defense attorneys. In the letter to Respondent and opposing counsel, Ms. Gannaway purportedly fired Respondent, fired opposing counsel, instructed Respondent to sell her story to the National Enquirer, and discussed the millions she could have made if she had taken her children to church and the children had been molested by a Catholic priest. **Ex.** 7, p. 3.

After receiving Ms. Gannaway's letter, the defense attorneys wanted to review Ms. Gannaway's medical and psychiatric records while she was involuntarily committed. **Ex.** 7. While Respondent had copies of the papers he had filed with the court concerning Ms. Gannaway's involuntary commitment, Respondent did not have copies of her medical or psychiatric records while hospitalized. **Ex.** A, ¶ 17.

On or about July 2, 2002, defense counsel provided Respondent with "Authorization To Release Medical Records and Psychiatric/Psychological Records" ("Authorization") form. **Ex.** A, ¶ 18; **Ex.** 8. The Authorization provided that the Southwest Missouri Psychiatric Rehabilitation Center ("Psychiatric Center"), the facility where Ms. Gannaway had been involuntarily committed, was authorized to release Ms. Gannaway's medical and psychiatric/psychological records to defense counsel. **Ex.** A, ¶ 18; **Ex.** 9.

On or about July 16, 2002, Respondent signed Ms. Gannaway's name to the Authorization. **Ex.** A, ¶ 19; **Ex.** 9. Ms. Gannaway was not present when Respondent signed the Authorization. **Ex.** A, ¶ 19. Respondent did not note on the Authorization that he was signing upon Ms. Gannaway's behalf. **Ex.** A, ¶ 19. Respondent instructed his secretary, Ms. Anderson, to notarize the Authorization. **Ex.** A, ¶ 20. While Respondent did not specifically instruct Ms. Anderson as to the manner in which the Authorization should be notarized, the Authorization form contained a pre-printed acknowledgement which stated:

> "Subscribed and sworn to me before me this _____ day of
>
> _____ 2002, by Lisa Gannaway.
>
> _____
>
> Notary Public"

Ex. A, ¶ 18, 20.

Ms. Anderson notarized the Authorization to reflect that Ms. Gannaway had appeared before Ms. Anderson and that Ms. Gannaway had signed the Authorization

when, in fact, Respondent had signed Ms. Gannaway's name to the form. **Ex.** A, ¶ 18; **Ex.** 9.

Respondent sent the Authorization to the defense attorneys, who in turn forwarded the Authorization, along with a subpoena for Ms. Gannaway's medical and psychiatric records, to the Psychiatric Center. **Ex.** 11, p. 3-4. The Psychiatric Center refused to release Ms. Gannaway's records to defense counsel because the signature on the Authorization did not match the signature the Psychiatric Center had on file for Ms. Gannaway. **Ex.** A, ¶ 21. The custodian of records for the Psychiatric Center reported the discrepancy to the Psychiatric Center's attorney[3], Assistant Attorney General Andy Hosmer. **Ex.** 11.

On August 8, 2002, Mr. Hosmer called Ms. Anderson, the notary. **Ex.** 11, p. 1-2. Mr. Hosmer asked Ms. Anderson about Ms. Gannaway's signature on the Authorization. **Ex.** A, p. 1-2. Ms. Anderson then asked if she could call Mr. Hosmer back. **Ex.** 11, p. 1-2.

Later, Mr. Hosmer received a phone call from Respondent. **Ex.** 11, p. 1-2. Respondent stated that he was Ms. Gannaway's attorney and Ms. Anderson's employer. **Ex.** 11, p. 1-2. Respondent admitted to Mr. Hosmer that he should have indicated on the signature line that he, and not Ms. Gannaway, had actually signed the Authorization. **Ex.** 11, p. 1-2. After Respondent spoke with Mr. Hosmer, Ms. Anderson went to Ms.

[3] The Psychiatric Center is a Department of Mental Health institution represented by the Missouri Attorney General's office.

Gannaway's home and obtained Ms. Gannaway's signature on a new Authorization form. **Ex.** A, ¶ 22.

On September 26, 2002, Mr. Hosmer made a report to Informant about Respondent's actions. **Ex.** A, ¶ 23. Ms. Gannaway never complained to Informant about Respondent's actions. **Ex.** A, ¶ 23.

Around September 30, 2002, Ms. Anderson received notice that the Secretary of State for the State of Missouri ("Secretary of State") had received a complaint concerning Ms. Anderson's notarization of the Authorization. **Ex.** A, ¶ 24. By letter dated October 14, 2002, Respondent replied:

> "On the date in question, I signed for Lisa Gannaway the authorization to release medical records pursuant to my authority under the agreement. I failed to note that I was signing her name as attorney for her. That mistake was mine. The document was signed in front of my secretary by myself with full authorization from my client."

Ex. 12; **Ex.** A, ¶ 24. On October 23, 2002, the Secretary of State issued a cautionary letter to Ms. Anderson. **Ex.** A, ¶ 25; **Ex.** 13.

Based upon Mr. Hosmer's complaint, Informant opened an investigation into the matter. On April 22, 2003, Respondent was interviewed by the undersigned. During the interview, Respondent told the undersigned that in addition to signing the Authorization form, he had signed Ms. Gannaway's deposition transcript without notating that he was signing upon the behalf of Ms. Gannaway. **Ex.** A, ¶ 29.

On or about April 22, 2003, Brandon Standridge's case settled with Ms. Gannaway receiving in excess of $300,000. **Ex.** A, ¶ 30.

On May 9, 2003, Informant served Respondent with an Information charging Respondent with violation of Rules 4-3.4(b), 4-4.1(a), 4-8.4(a) and (c). Respondent filed a Motion to Dismiss for failure to state a claim. Because the Motion had exhibits attached to it, it was considered a Motion for Summary Judgment by the Disciplinary Hearing Panel and Respondent was ordered to file an Answer to the Information. On or about July 11, 2003, Informant filed a Motion for Summary Judgment. On or about August 6, 2003, Respondent filed his Answer.

A Disciplinary Hearing Panel heard the case on August 12, 2003, based upon the Stipulated Facts and the briefing the parties had prepared for their Motion to Dismiss and Motion for Summary Judgment. During the hearing, Informant requested leave to amend her information to plead that Respondent also violated Rule 4-5.3. The Panel denied Informant's Motion.

The Panel issued its decision on August 28, 2003, concluding Respondent committed professional misconduct by violating Rule 4-8.4(c) (engaging in conduct involving dishonesty, deceit, fraud, or misrepresentation). The Panel recommended that Respondent be publicly reprimanded. Respondent did not stipulate to the Panel's decision and recommendation, causing the record to be filed with this Court.

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULES 4-4.1(a) AND 4-8.4(c) IN THAT RESPONDENT REPRESENTED TO OPPOSING COUNSEL AND THE PSYCHIATRIC CENTER THAT MS. GANNAWAY HAD SIGNED THE JULY 16, 2002, MEDICAL RELEASE AUTHORIZATION WHEN IN FACT RESPONDENT HAD SIGNED THE AUTHORIZATION ON MS. GANNAWAY'S BEHALF WITHOUT NOTATING SUCH AND THEN RESPONDENT HAD HIS SECRETARY, THE NOTARY, SWEAR AND SUBSCRIBE TO MS. GANNAWAY'S SIGNATURE.

Cases

Cincinnati Bar Association v. Thomas, 754 N.E.2d 1263 (Ohio 2001)

Committee on Professional Ethics and Conduct v. Roberts, 312 N.W.2d 556, 557 (Iowa 1981)

In re Huffman, 13 P.3d 994, 999 (Or. 2000)

In re Wallingford, 799 S.W.2d 76 (Mo. banc 1990)

Rules

Rule 4-3.3(a)(1)

Rule 4-4.1(a)

Rule 4-8.4(c)

Rule 4-9.1

Statutes

Section 404.703(4) RSMo 2000

Section 404.712.6 RSMo 2000

Section 486.360 RSMo 2000

Section 491.060(5) RSMo 2000

Section 570.110 RSMo 2000

Regulations

42 C.F.R. § 2.31

42 C.F.R. § 2.4

Other Sources

58 Am. Jur.2d *Notaries Public* § 31 (2002)

ABA/BNA Lawyer's Manual of Professional Conduct Section 61:701 (1997)

Black's Law Dictionary 244 (abr. 5th ed. 1983)

Random House Webster College Dictionary 351 (1992)

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULE 4-3.4(b) IN THAT RESPONDENT SIGNED MS. GANNAWAY'S NAME TO HER DEPOSITION TRANSCRIPT AND HAD HIS SECRETARY NOTARIZE THE SIGNATURE, WHICH ATTESTED THAT THE SIGNATURE WAS THE SIGNATURE OF MS. GANNAWAY

Cases

Feld's Case, 815 A.2d 383 (N.H. 2002)

Rules

Rule 4-3.4(b)

Rule 57.01(b)

Rule 59.01(b)

Other Sources

Webster's College Dictionary 463 (1992)

III.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULE 4-5.3(c)(1) IN THAT RESPONDENT KNEW THAT HIS SECRETARY IMPROPERLY NOTARIZED MS. GANNAWAY'S DEPOSITION TRANSCRIPT AND MEDICAL RELEASE AUTHORIZATION TO REFLECT THAT MS. GANNAWAY HAD SIGNED THE DOCUMENTS AND RESPONDENT ALLOWED THE DOCUMENTS TO BE TRASNMITTED TO THIRD PARTIES

Cases

Lawyer Disciplinary Board v. Barber, 566 S.E.2d 245, 251-52 (W.V. 2002)

State v. Nelson, 206 Kan. 154, 476 P.2d 240

State v. Turner, 538 P.2d 966 (Kan. 1975)

State ex rel. Oklahoma Bar Association v. Moss, 794 P.2d 403 (Okla. 1990)

Rules

Rule 4-5.3(c)(1)

Rule 4-6.2

Rule 4-8.4(b)

Rule 5.11(c)

Rule 5.15(c)

Rule 55.33(b)

Statute

Section 570.110 RSMo 2000

IV.

THE SUPREME COURT SHOULD PUBLICLY REPRIMAND RESPONDENT BECAUSE PUBLIC REPRIMAND IS AN APPROPRIATE DISCIPLINE:

(1) WHEN AN ATTORNEY KNOWINGLY ENGAGES IN CONDUCT, OTHER THAN CRIMINAL CONDUCT, THAT INVOLVES DISHONSETY, FRAUD, DECEIT OR MISREPRESENTATION AND THAT CONDUCT ADVERSELY REFLECTS UPON THE ATTORNEY'S ABILITY TO PRACTICE LAW IN THAT RESPONDENT MISREPRESENTED TO OPPOSING COUNSEL AND A PSYCHIATRIC CENTER THAT HIS CLIENT HAD SIGNED CERTAIN DOCUMENTS AND RESPONDENT BETRAYED THE PUBLIC'S TRUST IN HIS TRUSTWORTHINESS AND THE NOTARARIZATION PROCESS; AND

(2) WHEN AN ATTORNEY FAILS TO PROPERLY SUPERVISE HIS EMPLOYEES IN THAT RESPONDENT FAILED TO PROPERLY SUPERVISE MS. ANDERSON WHEN MS. ANDERSON IMPROPERLY NOTARIZED MS. GANNAWAY'S DEPOSITON TRANSCRIPT AND THE MEDICAL RELEASE AUTHORIZATION

Cases

In re Wallingford, 799 S.W.2d 76 (Mo. 1990)

In re Wiles, 107 S.W.3d 228, 229 (Mo. banc 2003)

Rules

Rule 4-3.3(a)(1)

Other Sources

ABA Standards for Imposing Lawyer Sanction § 5.13 (1991)

ABA Standards for Imposing Lawyer Sanction § 9.1 (1991)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULES 4-4.1(a) AND 4-8.4(c) IN THAT RESPONDENT REPRESENTED TO OPPOSING COUNSEL AND THE PSYCHIATRIC CENTER THAT MS. GANNAWAY HAD SIGNED THE JULY 16, 2002, MEDICAL RELEASE AUTHORIZATION WHEN IN FACT RESPONDENT HAD SIGNED THE AUTHORIZATION ON MS. GANNAWAY'S BEHALF WITHOUT NOTATING SUCH AND THEN RESPONDENT HAD HIS SECRETARY, THE NOTARY, SWEAR AND SUBSCRIBE TO MS. GANNAWAY'S SIGNATURE.

In matters of attorney discipline, this Court reviews the evidence de novo and reaches its own conclusions of law.[4] *In re Wiles*, 107 S.W.3d 228, 229 (Mo. banc 2003). Professional misconduct is established by a preponderance of the evidence. *Id.*

Respondent violated both Rule 4-4.1(a) and 4-8.4(c). Rule 4-4.1(a) provides that in the course of representing a client a lawyer shall not knowingly make a false statement

[4] The standard of review is the same for all of the Points Relied On in this Brief. Consequently, Informant has only set forth the standard for review under Point I of this Brief and incorporates the standard of review into the other Points Relied On.

of material fact to a third person. Rule 4-8.4(c), in turn, provides that it is professional misconduct to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

1. Rule 4-4.1(a)

As part of the Stipulation of Facts, Respondent admitted that: (1) he represented to opposing counsel and the Psychiatric Center that Ms. Gannaway had signed the July 16, 2002, Medical Records Release Authorization, (2) Ms. Gannaway had not signed the Authorization, (3) Respondent knew Ms. Gannaway had not signed the Authorization, and (4) Respondent was representing Ms. Gannaway in connection with a wrongful death action when he provided the Authorization to opposing counsel. **Ex.** A, ¶¶8, 18-21. Thus, it is undisputed that Respondent knowingly made a false statement to opposing counsel and the Psychiatric Center in connection with representing Ms. Gannaway.

The only issue in question regarding a violation of Rule 4-4.1(a) is whether the false statement was of a material fact. In the disciplinary context, a material fact is a fact that had it been known by the decision-maker would or could have influenced the decision-making process significantly. See *In re Huffman*, 13 P.3d 994, 999 (Or. 2000). In the instant case, the fact that Ms. Gannaway did not sign the Authorization clearly affected the decision-making process of the Psychiatric Center. The Psychiatric Center refused to release Ms. Gannaway's medical records to defense counsel based upon the Authorization because the signature the Center had on file for Ms. Gannaway did not match the signature on the Authorization. **Ex.** A, ¶ 21. There was a good reason that the Psychiatric Center refused to release Ms. Gannaway's medical records without her consent.

Pursuant to Section 491.060(5), RSMo 2000, medical records are not discoverable because of the physician-patient privilege.[5] *Brandt v. Pelican,* 856 S.W.2d 658, 661 (Mo. banc 1993). The privilege can only be waived by the patient and the physician must protect the privilege by asserting the privilege when applicable. *State ex rel. Dixon Oaks Health Center, Inc. v. Long, 929 S.W.2d 226, 229 (Mo. App. S.D. 1996).* Hospital records are included within the privilege. *Klinge v. Lutheran Medical Center of St. Louis,* 518 S.W.2d 157, 165 (Mo. App. E.D. 1974). If the physician or hospital discloses any medical records, without first obtaining the patient's waiver, the patient may maintain an action for damages in tort against the physician or hospital. *Fierstein v. De Paul Health Center,* 24 S.W.3d 220, 224 (Mo. App. E.D. 2000).

[5] Section 491.060(5), RSMo 2000, provides, in pertinent part:

> The following persons shall be incompetent to testify:
>
> (5) A physician licensed pursuant to chapter 334, RSMo, . . . concerning any information which he or she may have acquired from any patient while attending the patient in a professional character, and which information was necessary to enable him or her to prescribe and provide treatment for such patient as a physician… .

The confidentiality of Ms. Gannaway's medical records also appears to be protected by 42 C.F.R. Part 2. See Ex. 9.[6] 42 C.F.R. § 2.31 provides that before a psychiatric hospital can release patient information, the hospital has to obtain a written consent to disclosure signed by the patient. 42 C.F.R. § 2.4 further provides that a psychiatric hospital could be fined up to $500 for failing to obtain the proper consent of a patient before disclosing patient records to a third party. Thus, it is clear that the Psychiatric Center was prohibited by law from releasing Ms. Gannaway's medical records to a third party unless Ms. Gannaway or someone legally entitled to act on Ms. Gannaway's behalf provided such release. It is also clear that the Psychiatric Center could suffer monetary damages if it wrongfully released Ms. Gannaway's records.

While Respondent has asserted that he had authority from Ms. Gannaway to sign her name to the Authorization, Respondent did not notate that he was signing Ms. Gannaway's name as an attorney-in-fact or provide any documentation to the Psychiatric Center that Ms. Gannaway had authorized him to sign on her behalf.

Accordingly, the Psychiatric Center had no reason to believe that anyone else besides Ms. Gannaway was authorized to sign the Authorization, and it was a material fact to the Psychiatric Center whether Ms. Gannaway had actually signed the Authorization. Therefore, Respondent violated Rule 4-4.1(a).

[6] The Authorization provides "The records so released are records whose confidentiality is protected by Federal law. Federal Regulations (42 CFR part 2) prohibits disclosure of the information for purposes other than the litigation set out above. . . ."

2. Rule 4-8.4(c)

Respondent's conduct also involved dishonesty, deceit, misrepresentation, and fraud and subjects Respondent to discipline for violation of Rule 4-8.4(c). Dishonesty is defined as a "disposition to lie or untrustworthiness." Black's Law Dictionary 244 (abr. 5th ed. 1983). It was a lie that Ms. Gannaway had signed the Authorization. Therefore, Respondent was dishonest when he submitted the Authorization to defense counsel.

Deceit means to "mislead by a false appearance or statement." Random House Webster College Dictionary 351 (1992). Likewise, a misrepresentation is "any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts." Black's Law Dictionary 244 (abr. 5th ed. 1983). By signing Ms. Gannaway's name to the Authorization, having his secretary notarize Ms. Gannaway's signature, and then forwarding the Authorization on to defense counsel, Respondent attempted to mislead defense counsel and the Psychiatric Center and his actions met the definition of deceit. His manifestation also amounts to an assertion not in accordance with the facts or a misrepresentation.

Respondent's action also meets the definition of "fraud" as used in the disciplinary context. "Fraud" is defined in the disciplinary context as "conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information." Rule 4-9.1. Respondent's intent to deceive is shown by the fact that he signed Ms. Gannaway's name to both the deposition transcript and to the medical Authorization without indicating that he was signing on Ms. Gannaway's behalf and

without attaching any documentation to show his authority to sign on Ms. Gannaway's behalf. Respondent then had his secretary notarize the documents to reflect that Ms. Gannaway appeared and signed both documents. It is obvious from Respondent's actions that he intended the readers of the deposition and the Authorization to believe that Ms. Gannaway had appeared and signed the documents. It was not merely negligence or oversight upon Respondent's part in forgetting to denote that he was signing on Ms. Gannaway's behalf.

During oral arguments before the Disciplinary Hearing Panel, Respondent asserted that his conduct was permissible because he had the permission of Ms. Gannaway to sign the Authorization. In support of his argument, Respondent relied upon language found in his fee agreement with Ms. Gannaway. **Ex.** A, ¶ 8.

Respondent's argument was without merit. First, the fee agreement did not specifically authorize Respondent to sign Ms. Gannaway's name to medical release authorizations. It is undisputed that an agent cannot go beyond the powers specifically conferred upon him in the power of attorney. *Prior v. Hager*, 440 S.W.2d 167, 174 (Mo. App. W.D. 1969).

Second, it is undeniable that when Respondent signed the Authorization Ms. Gannaway's mental condition was very poor. In fact, just a few weeks before

Respondent signed the Authorization,[7] Ms. Gannaway had sent rambling letters to opposing counsel and Respondent whereby she purportedly fired Respondent, fired opposing counsel, instructed Respondent to sell her story to the National Enquirer, and discussed the millions she could have made if she had taken her children to church and the children had been molested by a catholic priest. See **Ex.** A, ¶ 16; **Ex.** 7, p. 3. Furthermore, Ms. Gannaway had been involuntarily committed to the Psychiatric Center in December 2001, because of severe psychiatric problems. **Ex.** A, ¶ 15, **Ex.** 6.

Section 404.712.6, RSMo 2000, provides:

> "The authority of an attorney in fact, under a power of attorney that is not durable,[8] is suspended during any period that the principal is disabled or incapacitated to the extent that the principal is unable to receive or evaluate information to communicate decisions with respect to the subject

[7] Respondent signed the Authorization on July 16, 2002, **Ex.** A, ¶ 19. Ms. Gannaway wrote incoherent letters to Respondent and opposing counsel on May 30, 2002. **Ex.** A, ¶ 16.

[8] A durable power of attorney is a written power of attorney in which the authority of the attorney-in-fact does not terminate in the event the principal becomes disabled or incapacitated. Section 404.703(4) RSMo 2000. Respondent's fee agreement does not contain any language indicating that Respondent had any right to act upon Ms. Gannaway's behalf if Ms. Gannaway became incapacitated or disabled. **Ex.** A, ¶ 8, **Ex.** 3.

> of the power of attorney, and an attorney in fact under a power of attorney that is not durable shall not act in the principle's behalf during any period that the attorney in fact knows the principal is so disable or incapacitated."

Given Ms. Gannaway's altered mental state during the relevant time period, Respondent would have been prohibited by Section 404.712.6, RSMo 2000 from acting on her behalf even if he had had authority to sign her name to the Authorization as she was obviously incapacitated.

Moreover, whether Respondent had Ms. Gannaway's permission to sign her name to the Authorization is not critical to the issue before this Court. The critical facts are that Respondent did not notate that he was signing the Authorization on Ms. Gannaway's behalf and the Authorization was notarized by Respondent's secretary to reflect that Ms. Gannaway had appeared before the notary and signed the document.

In re Jennings, 468 S.E.2d 869 (S.C. 1996), is instructive on the issue. In *In re Jennings*, Respondent had signed a client's name to a satisfaction of judgment form, signed the form as a witness and then had her paralegal notarize the signatures. Respondent attempted to justify her action by stating that the fee agreement was a power of attorney which gave respondent the authority to sign the client's name. Respondent further claimed that the client ratified the signature and no one was damaged by her action. The South Carolina Supreme Court held:

> "Even so, respondent's actions were improper under the Rules of Professional Conduct – this is not a civil action between the parties involved. `The forgery of a signature on a court document is a fraud upon

the court; we cannot conceive of any justification for such conduct. . . We find respondent's signing and notarizing Robert's name was misconduct.`"

Id. at 873 (citations omitted).

Cincinnati Bar Association v. Thomas, 754 N.E.2d 1263 (Ohio 2001), is also instructive in situations such as the instant one where it is alleged that the attorney had the authority to sign upon behalf of the client. In *Thomas*, a client seeking a divorce went to the attorney's office and reviewed and signed the petition and other papers the attorney prepared for filing. After the client left the attorney's office, the attorney realized that the client had failed to sign the affidavit in support of a restraining order. The attorney then called the client and obtained the client's verbal permission to sign the client's name to the affidavit. The attorney signed the client's name to the affidavit but did not indicate that he was signing on the client's behalf. The attorney, thereafter, notarized the signature stating in the notary subscription that the client had personally appeared before him and signed the affidavit.

Later, the attorney filed the affidavit with the court and opposing counsel noticed the signature was not that of the attorney's client and brought the discrepancy to the attention of the attorney. At opposing counsel's suggestion, the attorney filed a properly signed affidavit with the court with exactly the same information as the first affidavit. Even though the attorney had verbal permission to sign his client's name to the affidavit, the Ohio Supreme Court found that respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation and publicly reprimanded respondent.

It is also irrelevant that Ms. Gannaway did not suffer any harm from Respondent's actions. In a disciplinary context, it is not necessary to show actual damage to the client or parties to the lawsuit. One of the purposes of attorney discipline is to maintain the integrity of the legal profession. Accordingly, if the action of the attorney reflects unfavorably upon the integrity of the profession, discipline is appropriate so other members of the Bar are deterred from engaging in similar conduct. *In re Littleton*, 719 S.W.2d 772, 777 (Mo. banc 1986) (citations omitted). As this Court stated in *In re Disney*, 922 S.W.2d 12, 15 (Mo. banc 1996), when discussing Rule 4-8.4(c), "[q]uestions of honesty go to the heart of the fitness to practice law…. Misconduct involving subterfuge, failing to keep promises, and untrustworthiness undermine public confidence in not only the individual but in the bar." Consequently, conduct which undermines the public confidence is subject to discipline.

In *In re Wallingford*, 799 S.W.2d 76 (Mo. banc 1990), this Court addressed a very similar fact scenario to the instant case. Respondent represented a man in a dissolution and custody action in which the mother was awarded custody of the couple's son. The mother took the child to California and then sought registration of the Missouri judgment in California. Respondent prepared and filed in the California court two affidavits purportedly signed by the father and notarized by respondent. Respondent, however, actually signed the affidavits upon behalf of the father after respondent read the affidavits to the father and the father authorized respondent to sign the father's name to the documents. The circuit bar committee charged respondent with violating Rule 4-3.3(a)(1)(making a false statement of material fact to a tribunal).

Respondent argued that she should not be disciplined because the father had authorized her to sign his name and the affidavits were not used to the mother's disadvantage. This Court agreed that respondent had authority to sign on behalf of the father and that the mother was not harmed by respondent's actions. This Court, however, imposed public reprimand against respondent and stated:

> "The Rule 3.3(a)(1) violations . . . are well supported by the record. An attorney who is a notary public should not take an affidavit or an acknowledgement unless the maker signs personally and is in her presence. . . . Any departure from the precepts diminishes the stature and credibility of the entire legal profession. The wrong is not expunged simply because no harm resulted."

Id. at 78 (underlining added). See also *Committee on Professional Ethics and Conduct v. Roberts*, 312 N.W.2d 556, 557 (Iowa 1981) (attorney filed affidavit with court with a false signature on it, and Court held "It is no defense that he was seeking to further his client's interest, and she was not harmed…. It is prejudicial to the administration of justice to use untruthful means even to accomplish a lawful purpose."); *Garlow v. State Bar of California*, 640 P.2d 1106, 1109 (Cal. 1982) ("Affirmative representations made with intent to deceive, even though no harm results, are grounds for discipline."); ABA/BNA Lawyer's Manual on Professional Conduct Section 61:701 (1997)("Model Rule 3.4(b) prohibits a lawyer from falsifying evidence. A lack of intent to defraud or benevolent motive to assist a client does not preclude discipline.")

In the instant case, the harm was to the public. The purpose of a notary is to prove the authenticity of the signature. *Herrero v. Cummins Mid-America, Inc.*, 930 S.W.2d 18, 22 (Mo. App. 1996). A notary betrays the public trust when he or she signs a completed certificate of acknowledgement without requiring the personal appearance of the acknowledger. 58 Am. Jur.2d *Notaries Public* § 31 (2002).

In *Committee on Professional Ethics and Conduct v. West*, 387 N.W.2d 338 (Iowa 1986), the Iowa Supreme Court addressed a situation identical to the instant case whereby the attorney instructed his secretary to notarize the signatures of parties when the parties did not appear before the notary. The Court held:

> "It is unethical for a lawyer to engage in illegal conduct involving moral turpitude. . . . Likewise, it is unethical for a lawyer to engage in conduct that adversely reflects on his or her fitness to practice law. . . [A]ppellant violated both of these standards each time he caused his secretary to notarize the signatures of parties to instruments when the parties did not appear before her. It is a misdemeanor for a notary public to append the notary's official signature to documents when the parties have not appeared before the notary. …[A]ppellant aided and abetted his secretary in the commission of this crime."

Id. at 341 (underlining added).

In Missouri, like Iowa, it is a misdemeanor for a notary to append his or her official signature to a document when the parties have not appeared before the notary.

See Section 570.110, RSMo, 2000.[9] Furthermore, the employer of a notary public is also liable to persons involved for all damages proximately caused by the notary's official misconduct if the notary was acting within the scope of her employment at the time she engaged in the official misconduct and the employer consented to the misconduct. Section 486.360, RSMo 2000. As the Ohio Supreme Court stated in *Cincinnati Bar Association v. Reisenfeld*, 701 N.E.2d 973, 974 (Ohio 1998), "lawyers must not take a cavalier attitude toward . . . notary responsibilities."

Respondent has tried to place all blame upon his secretary/notary by asserting in his Answer that his secretary could have used a notary block to reflect that he signed the document on Ms. Gannaway's behalf and be asserting that he did not give his secretary

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[9] Section 570.110, RSMo 2000 provides:

> "1. A person commits the crime of issuing a false instrument or certificate when, being authorized by law to take proof or acknowledgment of any instrument which by law may be recorded, or being authorized by law to make or issue official certificates or other official written instruments, he issues such an instrument or certificate, or makes the same with the purpose that it be issued, knowing:
>
> (1) That it contains a false statement or false information; or
>
> (2) That it is wholly or partly blank.
>
> 2. Issuing a false instrument or certificate is a class A misdemeanor."

specific instruction regarding how she should notarize the documents. These arguments fall upon their face. What Respondent has ignored is that he, an experienced attorney, signed the two different documents on Ms. Gannaway's behalf, failed to note on either document that he was signing the documents on Ms. Gannaway's behalf and then asked his secretary to notarize the documents when the documents contained preprinted notary forms which reflected that Ms. Gannaway appeared and signed the documents. These facts show that it was the intent of Respondent for his secretary to notarize the documents to reflect that Ms. Gannaway had signed them. Otherwise, why wouldn't Respondent have attached written authority to sign Ms. Gannaway's name to the documents, specifically notated on the documents that he was signing upon Ms.Gannaway's behalf and instructed his secretary that the notary forms should be changed to reflect that he had appeared before the notary and signed the documents. What Respondent has done is aid and abet his secretary in the commission of crime and betrayed the public trust. Such action violates the Rules of Professional Conduct and is worthy of discipline.

Furthermore, the fact the Respondent actually obtained Ms. Gannaway's signature when the Psychiatric Center refused to accept his signature, does not immunize Respondent from discipline. Respondent did not take any corrective action until after he was questioned by the Missouri Attorney General, i.e. Respondent waited until he "was caught in the act" before correcting the problem.

Therefore, as a matter of law, Respondent's conduct in the instant case involved dishonesty, deceit, misrepresentation, and fraud and this Court should find that Respondent violated Rule 4-8.4(c).

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULE 4-3.4(b) IN THAT RESPONDENT SIGNED MS. GANNAWAY'S NAME TO HER DEPOSITION TRANSCRIPT AND HAD HIS SECRETARY NOTARIZE THE SIGNATURE, WHICH ATTESTED THAT THE SIGNATURE WAS THE SIGNATURE OF MS. GANNAWAY

Rule 4-3.4(b) provides that an attorney shall not falsify evidence. Evidence is defined as data which tends to prove or disapprove something. Webster's College Dictionary 463 (1992). To falsify means to make false or incorrect. *Id*. at 481. After Respondent signed the deposition transcript in question, the transcript provided that Ms. Gannaway had subscribed and sworn to the transcript, i.e. the transcript provided Ms. Gannaway was attesting to the accuracy of the transcript. This was obviously false. The only question at issue before this Court then is whether the transcript constituted "evidence". Obviously a deposition would fall into the definition of evidence as the purpose of such is to elicit testimony from a witness which tends to prove or disapprove certain allegations.

During oral arguments, the Disciplinary Hearing Panel seemed concerned that the deposition was never used at trial, as the parties ultimately settled the case. It is not necessary that the information in question be presented to a court for the information to be considered "evidence" as used in Rule 4-3.4(b). It is enough if the data is merely obtained through discovery. For example, In *Feld's Case*, 815 A.2d 383 (N.H. 2002), an

attorney was suspended for violating the equivalent of Missouri's Rule 4-3.4(b) when the attorney orchestrated, assisted, counseled and tolerated the formation of inaccurate and incomplete sworn responses to requests for admissions and interrogatories. Usually responses to requests for admissions or interrogatory answers are not filed with a court and there was no mention in the New Hampshire Supreme Court's opinion that the request for admission or interrogatory responses were ever presented to the court in an evidentiary hearing; however, the Court found that the attorney violated Rule 3.4(b), a rule identical to Rule 4-3.4(b). See Rules 57.01(b) and 59.01(b).

The New Hampshire Supreme Court's interpretation of the rule is consistent with the title to Rule 4-3.4 and comments to the rule. Rule 4-3.4(b) is entitled "Fairness to Opposing Party and Counsel" and the comments reference the use of unfair tactics in the discovery process. This indicates that when enacting the rule, this Court was concerned that opposing counsel receive truthful information from an attorney during the discovery process rather than focusing only on situations whereby the attorney provided false information to the tribunal.

In the instant case, Respondent represented that the deposition in question had been signed by his client when it had not. By doing so he made the deposition false and is guilty of violating Rule 4-3.4(b).

III.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULE 4-5.3(c)(1) IN THAT RESPONDENT KNEW THAT HIS SECRETARY IMPROPERLY NOTARIZED MS. GANNAWAY'S DEPOSITION TRANSCRIPT AND MEDICAL RELEASE AUTHORIZATION TO REFLECT THAT MS. GANNAWAY HAD SIGNED THE DOCUMENTS AND RESPONDENT ALLOWED THE DOCUMENTS TO BE TRASNMITTED TO THIRD PARTIES.

During oral argument before the Disciplinary Hearing Panel, Respondent tried to place blame upon his secretary/notary rather than himself. Informant countered by asserting that Respondent had violated Rule 4-5.3, for failing to adequately supervise his secretary/notary. Respondent objected, claiming that Informant had failed to plead a violation of Rule 4-5.3. Informant then sought to amend her pleadings to charge Respondent with violation of Rule 4-5.3. The Panel declined to allow such amendment.

First, it is not necessary for the Information to set forth a violation of Rule 4-5.3 in order for this Court to find a violation of Rule 4-5.3. Rule 5.11(c) provides that an information in an attorney disciplinary matter shall set forth in brief form the specific acts of misconduct charged and shall state briefly the grounds upon which the proceedings are based. Other courts have interpreted language very similar to the language in Rule 5.11(c) to not require the information to set forth the exact disciplinary rules violated. For example, in *State ex rel. Oklahoma Bar Association v. Moss*, 794 P.2d 403 (Okla.

1990), an attorney complained that the Bar Association's complaint did not set forth a violation of a particular rule even though the trial panel had found him guilty of violating such rule. The Oklahoma Supreme Court held:

> "The Complaint was adequate. Rule 6.2 of the Rules Governing Disciplinary Proceedings states:
>
> > `The complaint shall set forth the specific facts constituting the alleged misconduct. . .'
> >
> > This rule requires that the specific facts be set forth, and does not require the lawyer to be notified of the specific disciplinary rule that such conduct violates."

Id at 407.

In *State v. Turner*, 538 P.2d 966 (Kan. 1975), the Kansas Supreme Court considered whether it violated an attorney's due process rights to be found guilty of violating a disciplinary rule which was not set forth in the Information. The Court stated:

> "Since it is incumbent on an attorney to know the disciplinary rules regulating his profession we must conclude that the failure to the State Board of Law Examiners to set forth the specific disciplinary rules violated by respondent cannot be a basis for avoiding discipline. This in accord with our statement in *State v. Nelson*, 206 Kan. 154, 476 P.2d 240:
>
> > '. . .We must conclude that where the facts in connection with the case are clearly set out in the complaint a respondent is put on notice as to what ethical violations may arise therefrom. It is not required

> that the complaint contain a reference to the specific canon of ethics which may have been violated…..
>
> '. It is not incumbent on the board to notify the respondent of charges of specific acts of misconduct as long as notice is properly given of the basic factual situation out of which the charges might result…."

Id. at 972. See also *Lawyer Disciplinary Board v. Barber,* 566 S.E.2d 245, 251-52 (W.V. 2002).

In the instant case, Respondent was given notice that his signing of and his secretary's notarization of the deposition transcript and the Medical Release Authorization was being called into question i.e. Informant gave Respondent notice of the basic factual situation of which the charges might result. It was Respondent who asserted that he did not instruct his secretary on how to notarize the documents and that blame should be placed upon his secretary because she could have used an agency notary block. Respondent's own actions should have put him on notice that he might be charged with violating Rule 4-5.3. Therefore, it is not necessary for the Information to set forth a violation of Rule 4-5.3 for this Court to find a violation of Rule 4-5.3.

Moreover, even if Rule 5.11(c) required the Information to allege a violation of Rule 4-5.3, the Disciplinary Hearing Panel should have granted Informant's request to amend the Information. Rule 5.15(c) provides that all hearings shall be in accordance with the rules of this Court. Rule 55.33(b), in turn, provides,

> "If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would cause prejudice in maintaining the action or defense upon the merits."

In the present action, the presentation of the merits of the action will be useful in promoting the cause of action. Respondent has tried to place all blame upon his secretary/notary. Respondent stated in his Answer that "the notary could have used an agency signature block" and in oral arguments Respondent continually asserted that he was not subject to discipline because the wrongdoing was upon the part of the notary, not himself. ¶ 16 of Answer. It would not serve the purpose of attorney discipline to permit the attorney to "skirt" discipline by permitting him to place the blame upon the secretary/notary when he clearly had a duty to supervise her work.

Furthermore, there is no prejudice in permitting the Information to plead a violation of Rule 4-5.3. Before filing her information, the undersigned spoke with Respondent. During their conversations, Respondent never asserted that it was his secretary's fault and that he was without blame. It was not until August 6, 2003, a mere six days before the Hearing, when Respondent filed his Answer to the Information that Respondent raised the issue that his secretary could have changed the notarization form to reflect that he, instead of Ms. Gannaway, had signed the documents. By asserting a new defense, Respondent put into issue whether he was in fact properly supervising his

secretary/notary and should have been on notice that he would have to defend against the issue. Therefore, Respondent would not be prejudiced by allowing amendment of the Information.

Rule 4-5.3(c)(1) provides that a lawyer shall be responsible for conduct of a nonlawyer employed by the lawyer that would be a violation of the Rules of Professional Conduct engaged in by a lawyer, if the lawyer with knowledge of the specific conduct, ratifies the conduct involved.

In the instant case, it would have been a violation of Rule 4-8.4(b)(committing a criminal act that reflects adversely upon the lawyer's honesty and trustworthiness) if Respondent had physically notarized Ms. Gannaway's deposition transcript and the Medical Release Authorization rather than Ms. Anderson. See Section 570.110, RSMo, 2000. Furthermore, Respondent had knowledge of Ms. Anderson's criminal conduct as Respondent was present when Ms. Anderson notarized the documents and he forwarded the Medical Release Authorization on to opposing counsel, ratifying Ms. Anderson's conduct. Consequently, Respondent violated Rule 4-5.3(b)(c)(1) and should be disciplined for such.

IV.

THE SUPREME COURT SHOULD PUBLICLY REPRIMAND RESPONDENT BECAUSE PUBLIC REPRIMAND IS AN APPROPRIATE DISCIPLINE:

(1) WHEN AN ATTORNEY KNOWINGLY ENGAGES IN CONDUCT, OTHER THAN CRIMINAL CONDUCT, THAT INVOLVES DISHONSETY, FRAUD, DECEIT OR MISREPRESENTATION AND THAT CONDUCT ADVERSELY REFLECTS UPON THE ATTORNEY'S ABILITY TO PRACTICE LAW IN THAT RESPONDENT MISREPRESENTED TO OPPOSING COUNSEL AND A PSYCHIATRIC CENTER THAT HIS CLIENT HAD SIGNED CERTAIN DOCUMENTS AND RESPONDENT BETRAYED THE PUBLIC'S TRUST IN HIS TRUSTWORTHINESS AND THE NOTARARIZATION PROCESS; AND

(2) WHEN AN ATTORNEY FAILS TO PROPERLY SUPERVISE HIS EMPLOYEES IN THAT RESPONDENT FAILED TO PROPERLY SUPERVISE MS. ANDERSON WHEN MS. ANDERSON IMPROPERLY NOTARIZED MS. GANNAWAY'S DEPOSITON TRANSCRIPT AND THE MEDICAL RELEASE AUTHORIZATION.

When determining an appropriate penalty for the violations of the Rules of Professional Conduct, this Court considers the gravity of the misconduct, as well as mitigating or aggravating factors that tend to shed light on respondents' moral and intellectual fitness as an attorney. *In re Wiles*, 107 S.W.3d 228, 229 (Mo. banc 2003).

As discussed in Points I and II and incorporated into this Point, Respondent knowingly engaged in conduct that involved dishonesty, fraud, deceit or misrepresentation and betrayed the public's trust in his trustworthiness and the notarization process. These facts reflect adversely upon Respondent's ability to practice law. Also as discussed in Point III and incorporated into this Point, Respondent failed to properly supervise his employee, Ms. Anderson.

This Court should publicly reprimand Respondent for his actions. The American Bar Association recommends public reprimand in situations like the instant one whereby an attorney knowingly engages in conduct, other than criminal conduct, that involves dishonesty, fraud, deceit or misrepresentation and the conduct reflects adversely on the lawyer's fitness to practice law. See ABA Standards For Imposing Lawyer Sanction § 5.13 (1991). Likewise, the ABA recommends imposing a public reprimand on an attorney who fails to properly supervise his employees. *Id*. at § 7.3. The discipline requested by Informant is also consistent with the discipline imposed by this Court in *In re Wallingford*, 799 S.W.2d 76 (Mo. 1990). As discussed above, *Wallingford* presented a situation almost identical to the instant one.

The ABA's Standards for Imposing Lawyer Sanctions also provides that after misconduct has been established, aggravating and mitigating circumstances may be

considered in deciding what sanction to impose. ABA Standards For Imposing Lawyer Sanction § 9.1 (1991). Aggravating factors to be considered include the Respondent's prior disciplinary history, refusal to acknowledge wrongful nature of conduct, and respondent's experience in the law. *Id.* at 9.2 Mitigating factors include full and free disclosure of a violation to Informant. *Id.* at 9.3.

In the instant case Respondent has previously received an admonition for violating Rule 3.3(a)(1) (making a false statement of material fact to a tribunal), and his prior admonition is similar in nature to his present violations in that it involves Respondent's honesty and trustworthiness. Furthermore, Respondent is a very experienced practitioner in that he was admitted to the Bar in 1984, and Respondent has failed to acknowledge his wrongful conduct in that he has tried to cast all of the blame upon his secretary/notary. These factors would indicate that more harsh discipline than public reprimand might be in order. However, when Informant's staff asked Respondent if he had signed Ms. Gannaway's name to any other document than the Medical Authorization, Respondent readily admitted to signing Ms. Gannaway's deposition transcript. Informant believes that when both the mitigating and aggravating factors are considered together, along with the gravity of the misconduct, that it is appropriate for this Court to publicly reprimand Respondent.

CONCLUSION

For the reasons set forth above, this Court should find that Respondent violated Rules 4-4.1(a), 4-8.4(c), 4-3.4(b), and 4-5.3(c)(1), publicly reprimand Respondent, and tax costs in this matter against Respondent.

Respectfully submitted,

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ATTORNEYS FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of November, 2003, two copies of Informant's Brief and a copy of the diskette containing the brief have been sent via First Class mail to:

Thomas G. Pyle
1765 Seclusion Pt, Apt. F
Colorado Springs, CO 80918

_____
Nancy L. Ripperger

CERTIFICATION: SPECIAL RULE NO. 1(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;

2. Complies with the limitations contained in Special Rule No. 1(b);

3. Contains 9,173 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and

4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

_____
Nancy L. Ripperger

APPENDIX